IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 45 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PURSHOTTAM M MANE

Versus

SENIOR POLICE INSPECTOR

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Appearance:

1. Criminal Revision Application No. 45 of 2004

MR CR ABICHANDANI for Petitioner No. 1

MR MA QURAISHI for Respondent No. 2

MR PD BHATE Ld. APP for Respondent No. 1 & 3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/09/2004

ORAL JUDGEMENT

1. Heard the ld. advocate Mr. CR Abichandani for the petitioner, ld. advocate Mr. Dastoor for respondent

no. 2 and Mr. PD Bhate, ld. APP for opponent no. 1 and 3. Upon the request of ld. Advocates for the parties the matter was finally heard.

2. This revision application is filed by the ori. complainant (informant) of Vadodara Taluka Police Station CR No. I-21/2003.

3. The petitioner has filed the above said complaint on 15.3.2003 at 10.15 hrs. before the aforesaid police station against opponent no. 2, stating that the petitioner was doing the business in the name and style of "Radhakrishna Transport Company" and he had entrusted his truck bearing No. GJ-3-V-9122 to the present opponent no. 2, as a driver along with goods of clothes amounting to Rs. 12,50,000/-. He received a phone call on 1.3.2003 from opponent no. 2 informing him that the truck has been lost with the goods and that he was not feeling well. Since opponent no. 2 did not explain the disappearance of the truck as well as goods entrusted to him, ultimately, a complaint came to be filed by the present petitioner. It appears that during the investigation, accused - opponent no. 2, took the stand that somebody administered him some intoxicating substance and he lost consciousness and lost truck as well as goods. The crime came to be registered against opponent no. 2 for the offence punishable under sec. 407 of the Indian Penal Code. On filing charge-sheet, case was registered as Criminal Case No. 1751/2003 before the ld. Judicial Magistrate First Class, 3rd Court, Baroda. On issuance of witness summons, complainant appeared before the ld. Judicial Magistrate First Class and on 22.1.2004 he filed application at ex. 17 before the ld. Judicial Magistrate First Class to direct the police for further investigation. His application along with application ex. 15 was heard together and vide order dated 22.1.2004, ld. Judicial Magistrate First Class, 3rd Court, Baroda, was pleased to reject the above said application and hence, this revision application. At the out set, it is necessary to mention that the scope of sec. 173(8) of Code of Criminal Procedure for further investigation is very wide and not fettered by anything. In this revision application, we are concerned with the legality and propriety of the order impugned. It is pertinent to note that vide ex. 21 on 20.12.2003, which was produced on 22.1.2004, opponent no. 2 had filed the pursis declaring that some identification parade was held in jail and he identified person who had looted the truck in question. Opponent no. 1 appears not to have been released on bail, and thereafter, the petitioner preferred an

application for further investigation.

4. Ld. Magistrate rejected the application on the grounds that:

1) A charge-sheet has been filed in this court;

2) In all, six witnesses have been examined and after examining the complainant and witnesses, the case against opponent no. 2 stands closed;

3) The accused - opponent no. 2 is in jail right from 24.3.2003;

4) According to the reply of Investigating Officer to Home Ministry in pursuance of the application filed by the complainant, accused named as Ghanshyam Vasudev has been arrested.

5) The accused -opponent no. 2, according to the Investigating Officer, could not identify the said person;

5. Having gone through the above reasons, it clearly appears that none of the reasons given by the ld. Judge for rejecting the application under sec. 173(8) is sustainable. Further investigation in a case may be ordered having regard to the facts and circumstances of the case, investigation already made, the further scope of investigation to bring the truth before the court. None of these three aspects came to be examined by the ld. Judicial Magistrate First Class, Baroda. So far as the record of this revision application is concerned, pursis filed by opponent no. 2 amply discloses that he identified one person who had looted the truck including goods. In these circumstances, it is the duty of the concerned court to seriously consider the investigation carried out till now and further scope of investigation. Merely because the accused is in jail or some witnesses have already been examined or that Investigating Officer has stated that the accused could not identify the culprit, request for further investigation may not be rejected.

6. Since the matter is pending before the ld. Judicial Magistrate First Class, Court no. 3, Baroda, it would be in the interest of justice that after quashing the order impugned in this revision application, ld. Judicial Magistrate First Class, Court no. 3, Baroda be directed to consider the application of the complainant afresh and as indicated above having regard to the wider

scope of sec. 173(8) of the Code of Criminal Procedure. Whether trial could be stayed or whether opponent no. 2 is required to be released on bail, are the issues to be considered by the ld. Judicial Magistrate First Class, 3rd Court, Baroda, while deciding the above said application afresh without being influenced by the order passed by him on 21.1.2004.

7. This revision application is allowed to the extent that the order impugned in this revision application is quashed. Ld.Judicial Magistrate First Class, 3rd Court, Baroda is directed to decide the application as early as possible under sec. 173(8) of the Code of Criminal Procedure filed by the complainant afresh without being influenced by the earlier order passed by it. Rule is made absolute to the above extent only. DS permitted.

(J.R. VORA, J.)
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